

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALISHA MARIE HALL,

Defendant-Appellant.

UNPUBLISHED
September 4, 2014

No. 313795
Genesee Circuit Court
LC No. 12-031198-FC

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right her convictions of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under 13), and child sexually abusive activity, MCL 750.145c(2). She was sentenced to concurrent terms of 25 to 40 years' imprisonment for the CSC I conviction and to 75 to 240 months' imprisonment for the child sexually abusive activity conviction. We affirm.

Defendant and her husband were arrested for possessing pictures that depicted her husband sexually assaulting their infant daughter. At trial, a witness referenced bedding seized from defendant's home that was depicted in a picture not shown to the jury, which allegedly showed defendant engaging in inappropriate activity with the infant. The prosecution and defendant were unaware of the seizure of the bedding until then, and when defense counsel found the related search warrant, he discovered that two cameras were also seized. Defendant moved for a mistrial and argued that she could have used the evidence of the bedding and the new pictures to impeach the witness more effectively. The trial court granted a continuance and scheduled a hearing on the matter. The trial court ultimately denied defendant's motion.

Defendant first argues that the trial court abused its discretion in denying her motion. We disagree.

"We review for an abuse of discretion a trial court's decision regarding a motion for a mistrial." *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010).

After the prosecution learned of the new evidence, it brought the evidence to the trial court to give defense counsel and the trial court an opportunity to review the evidence. Because the prosecution promptly conveyed the new evidence to defendant, she has failed to establish a discovery violation. MCR 6.201(H). Regardless, even if we agreed that there was a discovery

violation, the trial court did not abuse its discretion in denying defendant's motion. MCR 6.201(J) provides the trial court with the discretion to remedy discovery violations. In doing so, "it is appropriate [for the trial court] in resolving the problem to determine what legitimate interests of the courts and of the parties are involved and how they may be affected by the remedial choices available." *People v Taylor*, 159 Mich App 468, 484; 406 NW2d 859 (1987). In this case, the trial court properly complied with MCR 6.201(J) and alleviated any harm to defendant by allowing "the inspection of materials not previously disclosed" and by granting a continuance. See *People v Elston*, 462 Mich 751, 764; 614 NW2d 595 (2000). Moreover, because the photographs were irrelevant to defendant's case, the granting of a mistrial would have put defendant "in a better position than [she] would have enjoyed had disclosure been timely made." *Taylor*, 159 Mich App at 487. With respect to the bedding, nothing in the record establishes that the prosecution failed to show defendant the bedding after learning about its seizure. Defendant bears "the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal was predicated." *Elston*, 462 Mich at 762. In this case, the record provides no factual basis to conclude that the prosecutor failed to make the bedding immediately available to defendant once he learned of its existence. Therefore, it would be error to reverse on that basis, and we decline to do so. See *id.*

Defendant also has not established the existence of a *Brady*¹ violation. To establish a *Brady* violation, defendant must show that the prosecution suppressed evidence that was favorable to her and when viewed in its totality, is material. *People v Chenault*, 495 Mich 142, 155; 845 NW2d 731 (2014).

First, defendant has not established that the prosecution suppressed evidence favorable to her. The prosecution learned of the evidence at the same time as defendant and proceeded to make the evidence immediately available to defendant. Moreover, the photographs were irrelevant to defendant's case, and defendant has not shown how the bedding would have been favorable to her. Second, defendant has not shown how the evidence was material. The photographs were not relevant to defendant's case, and defendant has not explained or shown how she could have used the bedding to impeach the witness more effectively, particularly where defendant had already attempted to attack the witness's credibility through cross-examination regarding his identification of defendant in the picture. There was also other evidence linking defendant to the crime, particularly her statements to the police that she photographed the victim. Overall, even in the absence of the evidence, defendant received a fair trial. See *Chenault*, 495 Mich at 157 (stating that the test for materiality is whether in absence of the evidence, defendant received a fair trial, i.e., "a trial that resulted in a verdict worthy of confidence"). Therefore, we find no *Brady* violation. Accordingly, because we find no discovery or *Brady* violation, we hold that the trial court did not abuse its discretion in denying defendant's motion for mistrial.

Defendant next argues that the mandatory 25-year minimum for CSC I under MCL 750.520b violates the separation of powers doctrine. We disagree.

"[T]he ultimate authority to provide for penalties for criminal offenses is constitutionally

¹ *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

vested in the Legislature.” *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001), citing Const 1963, art 4, § 45. The judiciary, on the other hand, administers the sentencing statutes enacted by the Legislature, and it has the power to exercise discretion in imposing sentences. *Id.* at 436-437; *People v Conat*, 238 Mich App 134, 147; 605 NW2d 49 (1999). The judiciary’s sentencing discretion is limited by the Legislature’s power to establish sentences. *Conat*, 238 Mich App at 147. “In other words, the Legislature has the exclusive power to determine the sentence prescribed by law for a crime, and the function of the court is only to impose [a] sentence under and in accord with the statute.” *Id.* (quotation marks and citation omitted); see also *People v Hall*, 396 Mich 650, 658; 242 NW2d 377 (1976) (finding that a mandatory term of life imprisonment for felony murder did not violate the separation of powers doctrine and was a permissible legislative limitation on the sentencing discretion of the courts). Therefore, the 25-year minimum under MCL 750.520b is a valid exercise of the Legislature’s constitutional power to establish the penalties for criminal offenses and it therefore does not violate the separation of powers doctrine.

Affirmed.

/s/ Kathleen Jansen

/s/ Donald S. Owens